

RECEIVED
CENTRAL FAX CENTER

JAN 06 2005

App. No. 10/777,667
Amdt. Dated January 6, 2005
Reply to Office Action of October 6 2004
Atty. Dkt. No. 8590-101

REMARKS / ARGUMENTS

This reply is responsive to the Office Action mailed October 6, 2004.

Claims 1 through 24 were pending in the application. Claims 1 through 19 were rejected and Claims 20 through 24 were withdrawn from consideration.

Independent claim 1 has been amended to clarify the language of the claim. The amendments to the claims were made to render them more clear and definite and to emphasize the patentable novelty thereof. There is no intention of surrendering equivalence.

New claims 25, 26 and 27 have been added to emphasize the patentable novelty of the invention. Claim 25 is directed to repeating the applying of abrupt jarring opposing forces. Claim 26 is directed to holding the vegetables by their upper portions. Claim 27 is similar to amended claim 1, without the limitation for packaging the vegetables in a container.

In the specification, the paragraph [0024] has been amended to correct minor editorial problems. The new paragraph [0029.1] added after paragraph [0029] clarifies the terms "singulated" and "singulating."

It is noted in the Office Action that the undersigned attorney made election without traverse to prosecute the invention of Group 1, claims 1-19. However, it is the recollection of the undersigned attorney that election was made of Group 1, claims 1-19, with traverse because no new search should be required.

CLAIM REJECTIONS – 35 U.S.C. § 112

Claims 6-9 have been rejected under 35 U.S.C. 112, first paragraph.

App. No. 10/777,867
Amdt. Dated January 6, 2005
Reply to Office Action of October 6 2004
Atty. Dkt. No. 8590-101

In the Office Action, it is asserted that claims 6-9 contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention.

The Applicant has amended the Specification to clarify the terms "singulated" and "singulating" where the term "singulated" may mean "singled out," and "singulating" may mean "one at a time. As such, the claims are now more clear and definite.

CLAIM REJECTIONS – 35 U.S.C. § 103

Claims 1 through 19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Cordes (U.S. 3,636,999) in view of <http://www.cfic.ca> (CFIC).

Cordes discloses an apparatus for pulling tops and root tendrils from garlic bulbs using multiple sets of opposed rolls with firm resilient surfaces that engage the protruding tops and roots. See Abstract. The roll contours are designed to exert a gentle pulling action on the root tendrils of the garlic bulbs when they are caught between the contact points of the slowly rotating rolls. See Column 1, lines 61-64.

It is noted that Cordes recognizes that the desired objectives of topping onions and garlic are exactly opposite. See Column 2, lines 24-25. Although the Cordes method is designed to be used with garlic, Cordes suggests that onions may be used as well "as long as the tops and root tendrils are mature and dry enough so that the gentle pulling action will separate the fragile ends without damage to the bulbs." See Column 2, lines 27-30. Unlike Applicants' technique, Cordes acknowledges that his device is incapable of de-rooting fresh onions. In this regard, Cordes states that gentle pulling may be successfully used only on onions that are dried. See Column 2, lines 27-30.

App. No. 10/777,687
Amdt. Dated January 6, 2005
Reply to Office Action of October 6 2004
Atty. Dkt. No. 8590-101

In the Applicants' approach, it is desired "to separate the roots or portions thereof at or near the root crown from the remaining portion of the vegetable." Furthermore, it is desirable that the top of the onion without the root be saved. Instead, Cordes points out that "onions and garlic although of the same family are radically different in construction." See Column 2, lines 14-16. To process garlic, Cordes discloses that a gentle pulling action be performed on the tops and root tendrils of the garlic bulbs. If onions, such as green onions, were processed by the Cordes method, both the tops and the roots on the onions may be removed since the Cordes method may not differentiate between tops and bottoms of vegetables as it removes both portions. See Col. 1, lines 60-63. Therefore, the Cordes method would be incapable of processing onions, such as green onions, since the Cordes method may also remove the onion tops which are desired to be saved in the Applicants' claimed approach, and Cordes admits his process will not work on onions which are not "mature and dry."

Using "abrupt jarring opposing forces" has many unexpected advantages in the processing of onions, such as green onions, including the unexpected result of inhibiting unwanted telescoping growth after the onions have been harvested. See Applicants' Specification, paragraph [0016].

In the Applicants' claimed approach, "a method of processing vegetables having bulbs including root crowns" (emphasis added) is provided. That method includes "applying abrupt jarring opposing forces...to separate the roots or portions thereof..." (emphasis added).

Instead, Cordes discloses a device that is incapable of performing "abrupt jarring" upon the vegetable. Cordes specifically states that "[t]he roll contours and roll position are designed to exert a gentle and positive pulling action on the tops and root tendrils of the garlic bulbs when they are caught between the contact points of the slowly rotating rolls." See Column 1, lines 61-64). Gentle pulling is the antithesis of "abrupt jarring." Thus, Cordes does not teach nor suggest "applying abrupt jarring

App. No. 10/777,667
Amdt. Dated January 6, 2005
Reply to Office Action of October 6 2004
Atty. Dkt. No. 8590-101

opposing forces,” and teaches away from such an approach by requiring a gentle pulling provided by slowly rotating rolls. As a result, the Cordes device is incapable of “separate[ing] the roots or portions thereof” as claimed by Applicants.

The Applicants claim “applying abrupt jarring opposing forces acting substantially in line between the top and bottom portions of each one of the vegetables...” (emphasis added). Instead, Cordes uses rolls 56 and 58 (see FIG 3) that are rotated causing the bulbs to be engaged by the rolls at an angle. Therefore, Cordes uses opposing forces that are not in line but rather at an angle to one another. As a result, the Cordes device is incapable of “applying abrupt jarring opposing forces acting substantially in line between the top and bottom portions of each one of the vegetables...” (emphasis added).

For the foregoing reasons, claim 1, as amended, and claims 2-19 patentably distinguish over Cordes either taken alone or in combination with other cited art of record.

The CFIC reference describes food safety issues in Canada involving pre-packaged vegetables. The CFIC reference specifically discusses unique food safety issues regarding pre-packaged vegetables and the laws and safeguards available in Canada to protect its consumers. Therefore, the CFIC reference does not teach, nor suggest, “applying abrupt jarring opposing forces acting substantially in line between the top and bottom portions of each one of the vegetables to separate the roots or portions thereof at or near each root crown from the remaining portion of each vegetable.”

Furthermore, Cordes provides no motivation to combine with the CFIC reference describing packaging of vegetables. Cordes only discloses that the garlic bulbs may be placed into a mobile storage and transport device and does not teach, nor suggest, packaging of the garlic bulbs. See Cordes Col. 3, lines 10-13. Moreover, even if the teachings in the Cordes reference and in the CFIC reference were somehow combined,

App. No. 10/777,687
Amdt. Dated January 6, 2005
Reply to Office Action of October 8 2004
Atty. Dkt. No. 8590-101

the resulting hypothetical method would not operate in the same manner as the Applicants' claimed approach. Neither Cordes, nor the CFIC reference, teach nor suggest a method that is capable of applying "abrupt jarring opposing forces" upon the vegetables. Also, neither reference discloses, nor suggests, applying forces "acting substantially in line between the top and bottom portions of each one of the vegetables."

For the foregoing reasons, claim 1, as amended, and claims 2-19 patentably distinguish over Cordes, either taken alone or in combination with the CFIC reference or the other cited art of record.

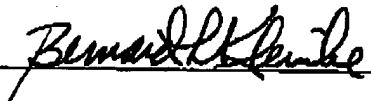
Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date: January 6, 2005

DUCKOR SPRADLING METZGER & WYNNE
A Law Corporation
401 West A Street, Suite 2400
San Diego, California 92101-7915

Telephone No.: 619.231.3666
Facsimile No.: 619.231.6629
Email Address: kleinke@dsmwlaw.com

By 

Bernard L. Kleinke
Attorney for Applicant
Registration No. 22,123